

D.T.E. 01-20 February 22, 2001

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts.

INTERLOCUTORY ORDER ON APPEAL FILED BY
VERIZON NEW ENGLAND, INC. D/B/A VERIZON MASSACHUSETTS
OF HEARING OFFICER'S RULING ON THE PROCEDURAL SCHEDULE

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INTERLOCUTORY ORDER ON APPEAL FILED BY
VERIZON NEW ENGLAND, INC. D/B/A VERIZON MASSACHUSETTS
OF HEARING OFFICER'S RULING ON THE PROCEDURAL SCHEDULE

I. INTRODUCTION

On January 12, 2001, the Department of Telecommunications and Energy ("Department") issued its Vote and Order opening this investigation to review unbundled network element ("UNE") rates and the avoided cost discount for resale services in the Commonwealth of Massachusetts ("Vote and Order"). In the Vote and Order, the Department divided the investigation into two parts to run on parallel tracks: (1) Part A for the development of new TELRIC-based UNE rates (both recurring and non-recurring); and (2) Part B for the development of a new avoided cost discount. The Department further divided Part A into two phases: (1) Phase 1 for consideration of the appropriate TELRIC model; and (2) Phase II to review the appropriate inputs to that model. Furthermore, the Department established a February 12, 2001 deadline for submission of proposed TELRIC models for calculating UNE rates and proposed avoided cost studies for calculating the wholesale discount. Finally, the Department scheduled a procedural conference for February 8, 2001.

On February 8, 2001, the Department held a procedural conference in this docket.⁽¹⁾ At the procedural conference, the hearing officer considered the Motion, filed by AT&T Communications of New England, Inc.'s ("AT&T") on February 6, 2001, to Extend the Time for Filing Models until March 12, 2001, and Requesting that UNE Cost Models and Model Inputs be Investigated by the Department in a Unified Proceeding ("Motion"). During a lengthy off-the-record discussion, Verizon indicated its support for AT&T's proposal for the Department to consider total element long-run incremental cost ("TRIC") methodology issues along with input and pricing issues. Thereafter, the hearing officer granted, in part, and denied, in part, AT&T's Motion by establishing a

procedural schedule that unified the review of the Part A UNE cost model and inputs, and set an April 12, 2001 deadline in Part A of this investigation for the submission of direct cases, including cost models, inputs, supporting documentation, direct testimony and proposed rates. Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") filed an Appeal of the Hearing Officer's Ruling on the Part A Procedural Schedule ("Appeal") on February 15, 2001.⁽²⁾ In support of its Appeal, Verizon attaches the Sworn Affidavit of Michael J. Anglin, Director of Service Costs for Verizon ("Anglin Affidavit"). On February 21, 2001, AT&T and WorldCom, Inc. ("WorldCom") filed replies Verizon's Appeal. Additionally, attached to WorldCom's reply is the Sworn Affidavit of Dr. Mark T. Bryant, Executive Staff Member in the Public Policy analysis Group ("Bryant Affidavit").

II. VERIZON'S APPEAL

A. Positions of the Parties

1. Verizon

Verizon maintains that the procedural schedule announced by the hearing officer must be overturned since the procedural ruling is inconsistent with the Department's Vote and Order, which bifurcated the Department's review of UNE cost models from the model inputs, and because Verizon is unable to meet the April 12, 2001 deadline set by the hearing officer for the filing of Verizon's direct case (Appeal at 3). Verizon notes that during the off-the-record discussion at the procedural conference, it supported AT&T's proposal for a unified review of UNE cost models and inputs, but explained that it would not be able to produce its direct case by March 12, 2001, as requested by AT&T, but would need at least until May 15, 2001⁽³⁾ (*id.* at 2-3). Verizon argues that it is patently unfair and unreasonable for the hearing officer to modify the bifurcated approach the Department adopted in the Vote and Order and then to set a filing date that Verizon cannot meet (*id.* at 5).

In the Anglin Affidavit, Mr. Anglin explains that the numerous cost studies that will be presented by Verizon in this proceeding will be conducted under his direction and supervision, and that based upon his experience in developing and preparing such cost studies for Verizon, Mr. Anglin states that it is not possible to conduct and prepare the results of all the cost studies, testimony and supporting documentation to establish Verizon's pricing of UNEs by April 12, 2001 (Anglin Affidavit at ¶¶ 3-4). Hence, in light of the magnitude of preparing the UNE filing, Mr. Anglin believes that Verizon would be able to make a complete submission by May 15, 2001, or if resources were diverted, by May 1, 2001 (Anglin Affidavit at ¶ 14; Appeal at 6).

2. AT&T

AT&T argues that if Verizon is successful in pushing back the starting date for Part A of this docket, the rest of the Part A schedule will have to be pushed back by at least the same amount of time (AT&T Reply at 2). Consequently, AT&T states that if the final

briefing is delayed, the Department will no longer have enough time to issue a decision and resolve any compliance filing(s) by the end of the year (id.). Furthermore, AT&T contends that Verizon has not met its burden of proving that it cannot comply with the April 12, 2001 filing date (id.). Rather, according to AT&T, Verizon conclusively asserts that compliance is impossible, but then fails to explain why (id.). AT&T maintains that if Verizon is able, by exerting some effort, to meet a May 1, 2001 deadline, it is not clear why Verizon could not exert more effort to meet the current April 12 deadline (id.).

Moreover, AT&T claims that there is no evidence that Verizon is creating a new cost study (AT&T Reply at 2). AT&T states that it appears that Verizon is merely taking its New York submissions and substituting historic Massachusetts-specific data for the historic data relied upon in its New York case (id.). AT&T notes that the Anglin Affidavit describes at great length the work involved in preparing the cost studies for the first time in the course of the Consolidated Arbitrations, but he makes no representations that preparation of Verizon's Part A direct case in this proceeding will be any more complicated than adapting the work Verizon did last year for New York (id. at 2-3). Accordingly, AT&T urges the Department to maintain the current schedule (id. at 3).

3. WorldCom⁽⁴⁾

WorldCom argues that the Anglin Affidavit does not provide any evidence in support of the conclusory statement that Verizon is incapable of meeting the April 12, 2001 deadline (WorldCom Reply at 1). Additionally, WorldCom asserts that the Anglin Affidavit fails to provide the Department with any facts regarding the tasks completed, in progress or yet to begin in this proceeding, or the resources that are dedicated, or could be dedicated to completing the tasks in this proceeding (id.). Accordingly, WorldCom states that the Department has been provided with no evidence in support of an extension beyond the current April 12, 2001 deadline for the filing of complete direct cases (id.).

In the Bryant Affidavit, Mr. Bryant indicates that, in his experience, the creation of cost studies to support rates in any particular state or proceeding is not an activity that must be undertaken from scratch in each instance (Bryant Affidavit at ¶ 7). Mr. Bryant further states that, although each state and each proceeding presents unique circumstances that must be taken into account, much of the data used in one state, as well as the techniques and tools developed to estimate costs in one state or proceeding, are applicable to operations in another state (id.).

Thus, Mr. Bryant urges the Department not to extend the April 12 deadline (id. at ¶ 8).

III. ANALYSIS AND FINDINGS

To begin, despite our earlier decision in the Vote and Order establishing a bifurcated review process for Part A of this proceeding, the Department upholds the hearing officer's decision to unify the Department's review of UNE cost models and inputs into a single combined proceeding. This approach is supported by the parties as a more expeditious procedural approach to this investigation, and is also the approach previously

employed by the Department in its prior proceedings establishing the current UNE rates in the Commonwealth.

Next, the Department grants Verizon's Appeal of that portion of the procedural schedule, issued on February 8, 2001, establishing an April 12, 2001 filing date for submission of the direct case. More precisely, the Department hereby modifies the filing deadline for submission of a party's direct case to May 1, 2001. The direct case shall include the cost model, model inputs, supporting documentation, direct testimony and proposed rates.

Our decision to modify the filing deadline is based upon the Affidavit of Michael Anglin that was submitted subsequent to the hearing officer's announcement of the procedural schedule. The Affidavit illustrates, by past experience, the extent of the work needed for Verizon to complete the required cost studies and other documentation for submission of its direct case, and also lists the cost studies for numerous categories of UNEs, as well as various other network elements, that will be reproduced for this proceeding based on current costing information, available technologies and the nature of the services offered. See Anglin Affidavit at ¶¶ 4-11. Because of the scope of the task before Verizon, we are persuaded that additional time beyond April 12, 2001 is necessary for Verizon to submit a comprehensive direct case. Moreover, even assuming Verizon does in fact utilize its New York filing and substitute Massachusetts-specific data, this would not diminish the magnitude of the effort needed to coordinate, validate and finalize the required cost studies and supporting documentation, to propose Massachusetts-specific rates, and to prepare pre-filed direct testimony for this proceeding. Indeed, in his Affidavit, Mr. Bryant notes that each state and proceeding presents unique circumstances that must be taken into account. See Bryant Affidavit at ¶ 7. Lastly, we note that our modification of the procedural schedule postpones the initial filing date for Part A by only 12 business days, and we find that completion of our review of any compliance filings in this docket by year's end is still reasonably possible. Accordingly, we direct the hearing officer to establish a procedural schedule for Part A of this proceeding based upon a May 1, 2001 deadline for submission of the direct case.

IV. ORDER

Accordingly, after review and consideration, it is

ORDERED: That the Appeal by Verizon New England, Inc. d/b/a Verizon Massachusetts of the Hearing Officer's Ruling on the Part A Procedural Schedule is hereby granted; and it is

FURTHER ORDERED: That Verizon New England, Inc. d/b/a Verizon Massachusetts, and any other party, shall file their direct case in Part A of this proceeding on or before May 1, 2001.

FURTHER ORDERED: That all parties comply with all other directives contained herein.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

1. At the procedural conference, the petitions to intervene of the following parties were granted: Verizon New England, Inc. d/b/a Verizon Massachusetts; Adelphia Business Solutions; Allegiance Telecom of Massachusetts, Inc.; AT&T Communications of New England, Inc.; Brahmacom, Inc., Essential.com, Inc., Norfolk County Internet, Inc., and

Servisense, Inc.; Covad Communications Company; Conversent Communications of Massachusetts, LLC; FairPoint Communications Solutions Corporation; Freedom Ring Communications d/b/a Bay Ring Communications, the Association of Communications Enterprises, and XO Massachusetts, Inc.; Global NAPs, Inc.; New England Cable Television Association, Inc.; Network Access Solutions Corporation; PaeTec Communications, Inc., El Paso Networks, LLC, and Network Plus, Inc.; RNK Inc. d/b/a RNK Telecom; Sprint Communications Company L.P.; United States Department of Defense and All Other Federal Executive Agencies; WorldCom, Inc.; and Z-Tel Communications, Inc.

In addition, Allegiance Telecom's Motion of Counsel to Appear *Pro Hac Vice* was granted; the motion of AT&T requesting the Department to establish reduced charges for UNEs that would permit competitive entry, before supporting any revised application by Verizon under 47 U.S.C. § 271 was denied; and the motion of FairPoint Communications requesting the Department to establish reduced charges for UNEs as an incentive to competition in underserved suburban and rural Verizon Massachusetts markets was denied.

2. Additionally, on February 15, 2001, WorldCom, Inc. submitted a Letter requesting the Department to expedite the procedural schedule by adopting the switching, transport and port rates currently being litigated in New York once they are established, and to limit the present proceeding to the establishment of loop and remaining UNE rates. This Interlocutory Order does not address WorldCom's request.

3. In its Appeal, Verizon indicates requesting a May 12, 2001 filing date; however, by Letter dated February 16, 2001, Verizon corrected the date to May 15, 2001.

4. WorldCom's Reply and the Bryant Affidavit also reiterate WorldCom's proposal to accelerate Part A of this proceeding by adopting certain to-be-established New York UNE rates. As stated above, we will not address this proposal here.